

Filed
Superior Court of California,
Sacramento
10/15/2024
chapman
By _____, Deputy
24CV020900

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Attorneys for Plaintiff,
SONIA CORTEZ on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

SONIA CORTEZ, individuals, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

A3 HOSPITALITY NATOMAS, LLC, a
California limited liability company, and
INTERMOUNTAIN MANAGEMENT, LLC,
a Louisiana limited liability company, and
DOES 1-50, inclusive,

Defendant.

Case No.:

**COMPLAINT
REPRESENTATIVE ACTION**

**Violation of the Private Attorneys
General Act of 2004, Cal. Labor Code
§2698 *et seq.***

BY FAX

1 Plaintiff SONIA CORTEZ brings this PAGA representative action complaint on behalf of
2 herself, all aggrieved employees, and the State of California as a Private Attorneys General, and
3 alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiff SONIA CORTEZ worked as an employee for Defendant A3 HOSPITALITY
6 NATOMAS, LLC and INTERMOUNTAIN MANAGEMENT, LLC, and Does 1-50 (collectively
7 “Defendant”). Defendant operates a hotel and provides hotel management services. Plaintiff
8 SONIA CORTEZ worked for Defendant work at their Sacramento, California, facilities where she
9 worked as a housekeeper at one of Defendant’s many locations, Towne Plaza Sacramento, from
10 June 2022 until May 31, 2024.

11 2. . Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
12 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly,
13 nonexempt employees of Defendant within one year of serving notice on the LWDA to the present
14 are aggrieved employees.

15 3. Defendant failed to comply with California Labor Code requirements due to erroneous,
16 willful and intentional employment practices and policies. Plaintiff brings this representative
17 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
18 California, based upon the claims articulated below. Plaintiff provided notice of their claims
19 pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
20 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
21 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
22 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
23 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

24 4. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
25 worked, including overtime hours worked; (2) failing to provide rest breaks; (3) failing to provide
26 uninterrupted meal breaks; (4) failing to reimburse for required business expenses; (5) failing to
27 provide accurate itemized wage statements. Defendant is therefore liable for civil penalties under
28

1 the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698
2 *et seq.*, as described more fully herein.

3 THE PARTIES

4 5. Plaintiff SONIA CORTEZ is a resident of the State of California and worked as a
5 housekeeper at one of Defendant’s many locations, Towne Plaza Sacramento, from June 2022
6 until May 31, 2024.

7 6. Defendant A3 HOSPITALITY NATOMAS, LLC, is a California limited liability
8 company authorized to do business and doing business in California with the capacity to sue and
9 to be sued, and doing business, in the county of Sacramento, State of California.

10 7. Defendant INTERMOUNTAIN MANAGEMENT, LLC, is a Louisiana limited liability
11 company authorized to do business and doing business in California with the capacity to sue and
12 to be sued, and doing business, in the county of Sacramento, State of California.

13 8. Plaintiff is unaware of the true names, capacities, relationships, and extent of
14 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
15 informed and believes and thereon alleges that said Defendant is legally responsible for the
16 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
17 will amend this complaint when their true names and capabilities are ascertained.

18 9. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
19 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
20 of the representative class, and exercised control over their wages, hours, and working conditions.
21 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
22 pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
23 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
24 to the other Defendants.

25 JURISDICTION AND VENUE

26 10. Venue is proper in this judicial district because Defendant conducts business in this
27 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
28 in this case that arose in this county.

1 11. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
2 the Superior Court and will be established according to proof at trial. Based on information,
3 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
4 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
5 (\$25,000).

6 12. The California Superior Court has jurisdiction in this matter because Plaintiff is a
7 resident of California and Defendant is qualified to do business in California and regularly conduct
8 business in California. Further, there is no federal question at issue as the claims herein are based
9 solely on California law.

10 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

11 13. During the relevant time period, Defendant committed various violations of the
12 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
13 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

14 14. This representative action represents over one hundred current and former aggrieved
15 employees.

16 15. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
17 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
18 numerous Labor Code sections, as set forth more fully below.

19 16. Plaintiff and all current and former hourly, nonexempt employees within one year of
20 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
21 *et seq.* (See Labor code §2699(c).)

22 17. Defendant, and each of them, has committed the following violations of the California
23 Labor Code:

24 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

25 (Cal. Labor Code §§200-204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194,
26 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders)

27 18. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
28 incorporate said paragraphs herein by reference.

1 19. The Wage Orders define “hours worked” as “the time during which an employee is
2 subject to the control of an including all the time the employee is suffered or permitted to work,
3 whether or not required to do so.”

4 20. Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by
5 employees of every description, whether the amount is fixed or ascertained by the standard of time,
6 task, piece, commission basis, or other method of calculation.”

7 21. Defendant has failed to accurately calculate hours worked, including overtime hours
8 worked. For example, Plaintiff’s timecards often show more overtime hours worked than the
9 amount of overtime she is paid for on her wage statements. Plaintiff and aggrieved employees also
10 worked during unpaid meal periods as discussed below.

11 22. Defendant further pays employees based on their scheduled work periods instead of
12 their actual work start and stop times. Time records show time shaving and Plaintiff believes and
13 alleges that time records are modified in an attempt to exclude and/or limit overtime wages paid.
14 For example, on occasions where Plaintiff clocks in at 8:29 am, the clock out period is consistently
15 :59 on the hour so that overtime is not indicated. This time shaving results in underreported and
16 underpaid wages, including overtime wages.

17 23. As a result of these ongoing violations, Defendant is liable for, among other things,
18 failure to pay minimum wages and failure to pay wages twice per calendar month (Cal. Labor
19 Code §204), as well as failure to pay all wages owed upon termination (Cal. Labor Code §§201-
20 203), and for civil penalties pursuant to Labor Code §§ 558 & 2698 et seq

21 **Failure to Provide Rest Breaks**

22 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

23 24. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 25. Defendant has failed to maintain a compliant rest period policy and practice that
26 provides its employees with off-duty rest periods as required by California law.

27 26. Plaintiff reports noncompliant rest breaks resulting from the extensive walk time it took
28 for aggrieved employees to get from the location they were stationed to work to the breakroom.

1 Plaintiff and aggrieved employees were required to report back to their work station 10 minutes
2 after leaving, so this walk time consistently cut into each rest break.

3 27. The rest period requirement obligates employers to permit and authorize employees to
4 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
5 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
6 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's
7 regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted
8 rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC
9 Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance
10 with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of
11 pay at the employee's regular rate of compensation for each work day that the rest period is not
12 provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable
13 rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein
14 the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a
15 rest area and cannot include time it takes to get to and from the rest area). The employer must show
16 that it clearly articulates the right to a net ten minutes, which means it must clearly communicate
17 what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest
18 area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v.*
19 *Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to
20 clearly communicate the authorization and permission [to take rest periods] to their employees.").

21 28. Rest periods were often either less than ten minutes, not provided, interrupted or late,
22 "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as
23 prescribed by California law because Defendant: (1) did not account for all hours worked that were
24 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
25 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
26 inform and train employees about when, where and how to take timely and uninterrupted ten-
27 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
28 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting

1 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
2 break policy.

3 29. Defendant did not authorize or permit all of its hourly employees to take at least a ten
4 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
5 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks
6 were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated
7 the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations,
8 Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 et. Seq.

9 **Failure to Provide Uninterrupted Meal Breaks**

10 (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

11 30. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 31. During Plaintiff's employment, Defendant failed to maintain a compliant meal period
14 policy and practice. Defendant failed to provide all of its hourly employees with their right to take
15 an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not
16 employ an employee for a work period of more than five hours per day without providing the
17 employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o
18 employer shall require an employee to work during any meal... period mandated by an applicable
19 order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in
20 pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the
21 meal period shall be considered an 'on duty' meal period and counted as time worked." Labor
22 Code 1198 states that any violation of a wage order is a violation of the Labor Code.

23 32. Plaintiff and aggrieved employees often experienced late, short, and interrupted meal
24 periods. Plaintiff and aggrieved employees were required to clock out for meal periods from their
25 personal devices at their assigned work station and they were required to report back to that same
26 location within 30 minutes. However, the assigned work location was a substantial distance from
27 the break area and this cut into employees' 30 minute minimum meal period, resulting in
28

1 consistently short meal periods and off the clock work while they were unpaid but under the
2 employer's control returning to their assigned workstation while off the clock.

3 33. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
4 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
5 (2) did not adequately inform and train employees about their rights to meal periods and premium
6 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
7 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
8 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
9 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
10 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff
11 and aggrieved employees were not paid a premium payment, paid as an hour's wage when meal
12 periods were not given to them in compliance with California law.

13 **Failure to Reimburse For Required Business Expenses**

14 (Cal. Labor Code §1198, 2802, 2699 *et seq.*)

15 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
16 incorporate said paragraphs herein by reference.

17 35. Labor Code §2802 requires employers to indemnify employees for necessary
18 expenditures or losses incurred by employees in direct consequence of discharge of duties.

19 36. Here, Plaintiff and aggrieved employees were required to clock in and out using their
20 personal phones but were not reimbursed for this necessary business expense. Defendant is
21 therefore liable to Plaintiff and aggrieved employees for civil penalties pursuant to Cal. Labor
22 Code §2698 *et. seq.*

23 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
24 **Requirements**

25 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

26 37. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
27 incorporate said paragraphs herein by reference.

1 38. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
2 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
3 and keep accurate records as required by §1174(d).

4 39. §226 (a) requires:

5 A. An employer, semimonthly or at the time of each payment of wages,
6 shall furnish to his or her employee, either as a detachable part of the check,
7 draft, or voucher paying the employee's wages, or separately if wages are paid
8 by personal check or cash, an accurate itemized statement in writing showing
9 (1) gross wages earned, (2) total hours worked by the employee, except as
10 provided in subdivision (j), (3) the number of piece-rate units earned and any
11 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
12 deductions, provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item, (5) net wages earned, (6) the
14 inclusive dates of the period for which the employee is paid, (7) the name of the
15 employee and only the last four digits of his or her social security number or an
16 employee identification number other than a social security number, (8) the
17 name and address of the legal entity that is the employer and, if the employer is
18 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
19 and address of the legal entity that secured the services of the employer, and (9)
20 all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee...

22 40. Wage statements were inaccurate because the overtime hours paid for on the wage
23 statements do not match the overtime hours indicated on payroll records. Moreover, employees
24 are often paid based on their work schedules instead of actual hours worked, resulting in inaccurate
25 pay records and wage statements.

26 41. Derivative of the claims above, wage statements were inaccurate and caused injury to
27 Plaintiff and others, by, among other things, impeding them from knowing the total hours worked
28

1 and the amount of wages to which they are and were entitled, including meal and rest period
2 premium wages. Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

3 **FIRST CAUSE OF ACTION**

4 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

5 **(California Labor Code §2698 *et seq.*)**

6 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 43. Plaintiff is an “aggrieved employee” under PAGA, as they were employed by
9 Defendant during the applicable statutory period and suffered one or more of the Labor Code
10 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other
11 current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus
12 reasonable attorneys’ fees and costs.

13 44. Plaintiff seeks to recover the PAGA civil penalties through a representative action
14 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
15 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

16 45. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
17 Code provisions:

- 18 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
19 Labor Code §§200-204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558,
20 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders);
- 21 b. Failure to Provide Rest Breaks (Cal. Labor Code §§2226, 226.7, 512, 558, 1198,
22 2698 *et seq.*);
- 23 c. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512,
24 558, 1198, 2699 *et seq.*);
- 25 d. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §1198,
26 2802, 2699 *et seq.*);
- 27 e. Failure to Provide Accurate Itemized Wage Statements & Violation of Record
28 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

1 46. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
2 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
3 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
4 employee for each subsequent violation of Labor Code §226(a).

5 47. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
6 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
7 for each underpaid employee for each pay period for which the employee was underpaid, and one
8 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
9 for which the employee was underpaid.

10 48. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
11 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
12 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
13 a civil penalty is not specifically provided.

14 49. Plaintiff and the other current and former employees of Defendant is aggrieved
15 employees. They were or are employed by Defendant, and each of them, and the violations alleged
16 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
17 current and former aggrieved employees.

18 50. At the time of each violation, Defendant employed one or more employees.

19 51. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
20 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
21 determined at trial, pre-judgment interest, costs and attorneys' fees.

22 52. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
23 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
24 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
25 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
26 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
27 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
28

1 §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved
2 employees and the State of California.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
5 judgement against Defendant as follows:

- 6 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
7 determined at trial, but at least the jurisdictional amount of this Court;
- 8 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
9 and/or other applicable law;
- 10 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
11 law;
- 12 4. Pre-judgement and post-judgement interest as provided by law; and
- 13 5. Such other and further relief that the Court may deem just and proper.
- 14

15 DATED: October 11, 2024

KOUL LAW FIRM

16
17 

18
19 BY: Nazo Koulloukian, Esq.
20 Attorneys for Plaintiff SONIA CORTEZ, and all
21 aggrieved employees
22
23
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25
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27
28

EXHIBIT 1



Nazo@Koullaw.com

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F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

August 2, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

A3 Hospitality Natomas, LLC
711 Calle Artis
San Jose, CA 95131

A3 Hospitality Natomas, LLC
c/o Michelle Carolina Della Penna
2801 Ocean Park #193
Santa Monica, CA 90405

InterMountain Management, LLC
2390 Tower Drive
Monroe, LA 71201

InterMountain Management, LLC
c/o 1505 Corporation Registered Agent Solutions
720 14th Street
Sacramento, CA 95814

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Sonia Cortez
Employers: A3 Hospitality Natomas, LLC
InterMountain Management, LLC

Dear Sir or Madam:

Claimant and aggrieved employee Sonia Cortez has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent her, and all other aggrieved employees in California, for wage and hour claims against her former employers, A3 Hospitality Natomas, LLC, and InterMountain Management, LLC (hereafter together referred to as “Employer”). Employer hired, assigned, and paid Claimant to work as a housekeeper at one of its many locations, Towne Plaza Sacramento, from June 2022 until May 31, 2024.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 227, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, additional code sections cited below herein, and all applicable Wage Orders.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

Cal. Labor Code §§200-204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Orders

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Employer has failed to accurately calculate hours worked, including overtime hours worked. For example, Claimant’s timecards often show more overtime hours worked than the amount of overtime she is paid for on her wage statements. Employees also worked during unpaid meal periods as discussed below.

Employer further pays employees based on their scheduled work periods instead of their actual work start and stop times. Time records show time shaving and Claimant believes and alleges that time records are modified in an attempt to exclude and/or limit overtime wages paid. For example, on occasions where Claimant clocks in at 8:29 am, the clock out period is consistently :59 on the hour so that overtime is not indicated. This time shaving results in underreported and underpaid wages, including overtime wages.

As a result of these ongoing violations, Employer is liable for, among other things, failure to pay minimum wages and failure to pay wages twice per calendar month (Cal. Labor Code §204), as well as failure to pay all wages owed upon termination (Cal. Labor Code §§201-203), and for civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Claimant reports noncompliant rest breaks resulting from the extensive walk time it took for aggrieved employees to get from the location they were stationed to work to the breakroom.

Employees were required to report back to their work station 10 minutes after leaving, so this walk time consistently cut into each rest break.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.").

Rest periods were often either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees often experienced late, short, and interrupted meal periods. Claimant and aggrieved employees were required to clock out for meal periods from their personal devices at their assigned work station and they were required to report back to that same location within 30 minutes. However, the assigned work location was a substantial distance from the break area and this cut into employees' 30 minute minimum meal period, resulting in consistently short meal periods and off the clock work while they were unpaid but under the employer's control returning to their assigned workstation while off the clock.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure to Reimburse For Required Business Expenses

Cal. Labor Code §§1198, 2802, 2699 *et seq.*

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees were required to clock in and out using their personal phones but were not reimbursed for this necessary business expense. Employer is therefore liable to Claimant and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Wage statements were inaccurate because the overtime hours paid for on the wage statements do not match the overtime hours indicated on payroll records. Moreover, employees are often paid based on their work schedules instead of actual hours worked, resulting in inaccurate pay records and wage statements.

Derivative of the claims above, wage statements were inaccurate and caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled, including meal and rest period premium wages. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue the claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorney for Claimant